

TENNESSEE REGULATORY AUTHORITY

Pat Miller, Chairman
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2004 OCT 25 PM 3:57
460 James Robertson Parkway
Nashville, Tennessee 37243-0505
TRA DOCKET ROOM

October 25, 2004

Mr. Chip Petersen
Assistant Town Administrator
Town of Collierville
500 Poplar View Parkway
Collierville, TN 38017

RE: Petition of Tennessee Wastewater Systems, Inc. to Expand Its Service Area to
Include a Portion of Shelby County, Tennessee Known as Collierville Gardens
TRA Docket No. 04-00253

Dear Mr. Petersen:

The Tennessee Regulatory Authority is in receipt of your letter of October 7, 2004, in which the Town of Collierville requests to file a petition for intervention in the above referenced docket.

Please be advised that if the Town of Collierville intends to oppose Tennessee Wastewater Systems' petition, the Town should file a petition to intervene in this docket within seven (7) days of the Authority Conference in accordance with the procedures set forth in Tenn. Code Ann. §§ 4-5-310 and 65-2-103 and stated in the Authority's Rules (Rules 1220-1-1-.03, 1220-1-1-.04 and 1220-1-1-.08). Copies of these statutes and TRA Rules are enclosed for your review. If you have any questions, please do not hesitate to give me a call.

Sincerely,

J. Richard Collier
General Counsel

Enclosures

c: Charles Pickney, Jr., President, Tennessee Wastewater Systems, Inc.
Docket No. 04-00253

complete the contested case without the participation of the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.

[Acts 1982, ch. 874, § 47.]

Section to Section References. This section is referred to in § 4-5-106.

4-5-310. Intervention.

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(c) If a petitioner qualifies for intervention, the administrative judge or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) Limiting the intervenor's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery and other participation in the proceedings.

(d) The administrative judge, hearing officer or agency, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative judge, hearing officer or agency may modify the order at any time, stating the reasons for the modification. The administrative judge, hearing officer or agency shall promptly

NOTES TO DECISIONS

1. In General.

Rulemaking is the preferable way to formulate new policies, rules, or standards Tennessee.

see Cable Television Ass'n v. Public Serv. Comm'n, 844 S.W.2d 151 (Tenn. Ct. App. 1992).

65-2-103. Petitions to be in writing — Filing fees. — (a) Every petition filed with the public service commission shall be in writing and shall be accompanied by a filing fee of twenty-five dollars (\$25.00).

(b) Any petition filed on behalf of multiple parties shall be accompanied by a payment of twenty-five dollars (\$25.00) for each party. [Acts 1986, ch. 862, § 1.]

Code Commission Notes. Former publication of rules, was transferred to § 65-2-102(b) by the code commission

Section to Section References. This section is referred to in § 3-6-112

Cited: Tennessee Cable Television Ass'n v. Public Serv. Comm'n, 844 S.W.2d 151 (Tenn. Ct. App. 1992)

65-2-104. Petition for declaratory ruling by the commission. — On the petition of any interested person, the commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the commission. A declaratory ruling, if issued after argument and stated to be binding, is binding between the commission and the petitioner on the state of facts alleged in the petition, unless it is altered or set aside by a court in a proper proceeding. Such rulings are subject to review in the chancery court of Davidson County in the manner hereinafter provided for the review of decisions in contested cases. The commission shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. [Acts 1953, ch. 162, § 5 (Williams, § 5501.28); T.C.A. (orig. ed.), § 65-204.]

65-2-105. Declaratory judgment on validity of rules. — The validity of any rule of the commission may be determined upon petition for a declaratory judgment thereon addressed to the chancery court of Davidson County, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The commission shall be made a party to all such proceedings. Such declaratory judgment may be rendered whether or not the petitioner has first requested the commission to pass upon the validity of the rule in question. In passing on such rules, the court shall declare the rule invalid only if it finds that it violates constitutional provisions or exceeds the statutory authority of the commission or was adopted without compliance with the rulemaking

thorized in the exercise of the powers and jurisdiction to issue orders on its own motion citing persons und appear before it and show cause why the commission should as the commission shall indicate in its show cause or preliminary investigation made by the commission referred upon it by law. All such show cause orders shall state the grounds and bases thereof, and the respondent be given an opportunity to fully reply thereto. Show otherwise follow the provisions of this chapter with cases, except where otherwise specifically provided. (Williams, § 5501.30); T.C.A. (orig. ed.), § 65-206.]

Collateral References. Federal control as 8 A.L.R. 969; 10 affecting right to enforce order. 4 A.L.R. 1680; A.L.R. 234, 19

65-2-107. Parties to contested cases. — All parties der the provisions of the laws applicable to the commission heard in contested cases as defined in this chapter shall such proceedings for the purposes of this chapter. In may upon motion allow any interested person to inter to any contested case. [Acts 1953, ch. 162, § 6 (Will (orig. ed.), § 65-207.)]

Law Reviews, Parties and Claims, 4 Mem Cited: McMillan
St. U.L. Rev. 280. 514 S.W.2d 725

65-2-108. Notice and hearing in contested cases. — Contested cases shall be afforded an opportunity for notice. The notice shall state the time, place, and manner as may be practicable. At the hearing all parties opportunity to present evidence and argument in accordance with the commission; provided, that informal disposition case by stipulation, agreed settlement, consent order further, that this section shall not be applicable provided for by law. [Acts 1953, ch. 162, § 8 (Will (orig. ed.), § 65-208.)]

Collateral References. Representation of commission as another before state public utilities or service A.L.R.3d 812

65-2-109. Rules of evidence — Judicial notice. In all contested cases:

(1) The commission shall not be bound by the rules of a court but it may admit and give probative effect to evidence which it possesses such probative value as would entitle it to

(Rule 1220-1-1- 01, continued)

- (j) "Electronic Document" means any documents created in digital format on a computer, in a format compatible with software in use by the Authority, and transmitted to the Authority via floppy disks, zip disks, cd-rom, e-mail or other electronic means

Authority: T C A §65-2-102 Administrative History: Original rule filed June 30, 2000, effective September 13, 2000

1220-1-1-02 APPLICABILITY.

Except as may be otherwise expressly provided either by these rules or by governing statutes, these rules shall apply to contested cases and Authority Conferences. These rules apply to arbitration proceedings held pursuant to 47 U S C § 252 (The Federal Telecommunications Act) unless otherwise specified. These rules do not apply to matters pertaining to the internal organization and functioning of the Authority.

Authority: T C A §§4-5-102, 65-2-102, 65-2-108, 65-4-101, and 65-4-104 Administrative History: Original rule filed June 30, 2000, effective September 13, 2000

1220-1-1-03 GENERAL FILING PROCEDURES.

- (1) All documents filed with the Authority shall be filed in the office of the Chair of the Authority, who is responsible for maintaining the official records of the Authority.
- (2) All documents filed in a formal proceeding shall contain a caption stating the style of the proceeding, the docket number unless no docket number has been assigned at the time of filing, and the date and title of the document being filed. All documents filed shall be signed by the party filing the same, or by that party's counsel. Where service is required, all documents filed shall contain a certificate, signed by the person responsible for service, confirming that service has been made on the persons there shown by the means there shown.
- (3) Upon receipt in the office of the Chair of the Authority, all documents shall be stamped on the first page thereof to show the date and time of filing. Persons submitting documents for filing may request, and the Chair of the Authority's office shall provide, a copy stamped to show the date and time of filing, to be returned to that person, either in person or by mail in a postage prepaid, self-addressed envelope furnished for that purpose.
- (4) Unless otherwise provided in these rules with respect to a particular category of proceeding, a written original and four (4) written copies of all electronic documents or an unbound, one sided original and thirteen (13) copies of all written documents shall be filed with the Chair of the Authority. The original shall be retained in the official files.
- (5)
 - (a) All documents filed with the Chair of the Authority must be on 8 1/2" x 11" paper where possible. Any physical exhibits, other than those submitted on 8 1/2" x 11" paper, must be accompanied by a copy of the exhibit or a description and explanation of the exhibit on 8 1/2" x 11" paper.
 - (b) All electronic documents shall be in a format compatible with software in use by the Authority, and shall be transmitted to the Authority via floppy disks, zip disks, cd-rom, e-mail or other electronic means.
- (6) The Chair of the Authority may refuse to accept any document which does not comply with these rules or with respect to which the required fees or charges have not been tendered.
- (7) Documents may be submitted by first class mail, certified or registered return receipt mail, hand delivery or overnight receipt courier and must be filed in the Office of the Chair of the Authority within the time fixed for filing. Documents may also be submitted by authorized electronic means or

(Rule 1220-1-1-.03, continued)

facsimile and when so submitted an original and the requisite number of written copies shall follow and be postmarked within the time fixed for filing.

- (8) Parties in a contested case in which a protective order has been entered who seek to file information which they deem proprietary shall file with the Authority requisite copies of said information in a sealed envelope clearly marked "proprietary information," and otherwise in accordance with the terms of the protective order. The provisions of this rule shall not abridge the right of any other party to contest the proprietary status of such information. Further, the Authority and its staff shall have the right to review said proprietary information for the purpose for which it was submitted.

Authority: T C A §§65-1-204, 65-1-209, 65-2-102, and 65-2-103 **Administrative History:** Original rule filed June 30, 2000, effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing Executive Secretary with Chair of the Authority, effective March 28, 2003.

1220-1-1-.04 DOCKETING AND FILING FEES.

- (1) Upon the filing of the document initiating any category of formal proceeding under these rules and the tendering of the requisite fees, the proceeding will be assigned a docket number, which shall be used to identify all documents and exhibits filed in that proceeding.
- (2) The Chair of the Authority shall charge and collect all filing fees required by law.
- (3) For the purposes of the filing fee for "petitions" authorized by T C A § 65-2-103, "petitions" shall include any initial filing, however denominated, which seeks action by the Authority and which is not otherwise covered by an express statutory provision or a provision of these rules or other rules of the Authority.

Authority: T C A §§65-1-204, 65-1-209, and 65-2-102 **Administrative History:** Original rule filed June 30, 2000, effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing Executive Secretary with Chair of the Authority, effective March 28, 2003.

1220-1-1-.05 WAIVER OF RULES.

- (1) For good cause, including expediting the disposition of any matter, the Authority may waive the requirements or provisions of any of these rules in a particular proceeding, on motion of a party or on its own motion, except when a rule embodies a statutory requirement. The Authority shall state the basis of any such waiver and may impose conditions or limitations consistent with the basis for the construction of these rules.
- (2) A party may waive the benefits or rights of that party expressed in any rule, but may not waive the fulfillment of any duty.

Authority: T C A §65-2-102 **Administrative History:** Original rule filed June 30, 2000, effective September 13, 2000.

1220-1-1-.06 HEARINGS AND AUTHORITY CONFERENCES.

- (1) All contested case hearings, public hearings under rulemaking and any other hearings pursuant to these rules shall be held at the offices of the Authority in Nashville, Tennessee at such dates and times as may be set in the official notice of hearing or as may be set by order of the Authority.
- (2) Scheduled and special Authority Conferences shall be held at the offices of the Authority in Nashville, Tennessee at such dates and times as the Authority may direct. The Authority may schedule regular, periodic dates for Authority Conferences, which may be rescheduled by the Authority, and any special meetings at such places, dates and times as the Authority may direct.

(Rule 1220-1-2-.06, continued)

- (6) Any party who wishes to seek interlocutory review by the Authority of a Hearing Officer's decision on a preliminary motion shall make application by motion to the Hearing Officer. Permission for interlocutory review shall not be unreasonably withheld.
- (7) Any order dismissing a case or otherwise substantially disposing of the merits of the case is not an interlocutory order and any such order issued by a Hearing Officer shall be considered as an initial order subject to review by the Authority as specified in § 4-5-315.
- (8) Nothing in this rule shall affect the right to seek interlocutory judicial review pursuant T C A § 4-5-322.

Authority: T C A §§4-5-308 and 65-2-102 **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing Executive Secretary with Chair of the Authority, effective March 28, 2003.

1220-1-2-.07 CONTINUANCES AND OTHER RESCHEDULING.

- (1) Any party desiring a continuance or other resetting of any hearing or pre-hearing conference shall file with the Chair of the Authority and serve on all parties a motion setting forth the grounds for the relief sought. Before filing such a motion, the movant shall attempt to contact the parties to the proceeding and shall state in the motion the position of each party.
- (2) Motions to continue or reschedule a hearing or pre-hearing conference in a case which has been referred to a Hearing Officer shall be addressed to the Hearing Officer. Motions to continue or reset any other hearing or pre-hearing conference shall be addressed to the Authority.
- (3) Any party opposing the continuance or rescheduling may file a response setting forth the basis for such opposition, but the motion may be decided without waiting for responses.
- (4) In determining whether to grant such a motion, the Hearing Officer or the Authority may consider the relative convenience of the parties, the Authority's calendar for hearings and the necessity for the expeditious disposition of the case.

Authority: T C A §§4-5-308 and 65-2-10. **Administrative History:** Original rule filed June 30, 2000, effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing Executive Secretary with Chair of the Authority, effective March 28, 2003.

1220-1-2-.08 INTERVENTION.

- (1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T C A. § 65-2-107.
- (2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.
- (3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.

Authority: T C A §§4-5-310, 65-2-102, and 65-2-107 **Administrative History:** Original rule filed June 30, 2000, effective September 13, 2000.